

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION  
3:09CV485-02-MU

MICHAEL ANTHONY TART,                     )  
    Plaintiff,                                 )  
   )  
    v.   )  
   )  
(FNU) LITTLE, Correctional Of-)   
    ficer at Lanesboro Correc- )   
    tional Institution;             )  
(FNU) McNAIR, Correctional Of-)   
    ficer at Lanesboro Correc- )   
    tional Institution;             )  
(FNU) PRESSLOR, Correctional )   
    Officer at Lanesboro Correc-)   
    tional Institution; and         )  
(FNU) PRESSLEY, Sergeant at )   
    Lanesboro Correctional In- )   
    stitution,                         )  
    Defendants.                         )  
\_\_\_\_\_ )

ORDER

THIS MATTER comes before the Court on initial review of Plaintiff's Complaint under 42 U.S.C. §1983, filed November 12, 2009. For the reasons stated herein, Plaintiff's Complaint will be dismissed as premature.

According to his Complaint, Plaintiff alleges that on an occasion in September 2009, Defendants used excessive force on him for no legitimate reason, thereby causing him pain and suffering. By way of relief, Plaintiff seeks monetary damages along with a federal investigation which includes the release of the "video footage" recording the subject incident.

Notwithstanding the foregoing, however, Plaintiff's

Complaint also explains that while he has completed the first and second steps of the inmate grievance process, he has not completed the third step as he has "not gotten [his] step # 3 back from Raleigh yet" (document # 1 at 2). Indeed, Plaintiff reports that he is "waiting on a respon[se] on step # 3." (Id.). It is, therefore, clear that Plaintiff's allegation of excessive force has not yet been exhausted and this Court cannot exercise jurisdiction over that matter. See 42 U.S.C. § 1997e(a) ("[n]o action shall be brought with respect to prison conditions under section 1983 of this Title, or any other federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted."). Accordingly, the instant Complaint must be dismissed without prejudice.

**NOW, THEREFORE, IT IS HEREBY ORDERED** that Plaintiff's Complaint is **DISMISSED without prejudice**.

**SO ORDERED.**

Signed: November 13, 2009



Graham C. Mullen  
United States District Judge

